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CURSORY VIEW,

OF THE

Ancient and Present STATE

OF THE

FIEFFS, *or* TENURES,

In both Parts of the United KINGDOM of

GREAT-BRITAIN.

*Ne quod Falsi dicere audeat; ne quid Veri dicere non
audeat. ----- Cicero de Offic.*

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THE
INTRODUCTION.

HAVING seen several Pamphlets concerning the Vassalages and Heretable Jurisdictions in SCOTLAND; I find one Set of Authors are for demolishing them all at any Rate: And others, who think them all so sacred, that no Changes can be made in any of them, without manifest Injustice and Danger to the State.

For

For my Part, I think both
are in the Wrong: And there-
fore have here made an Attempt
to gain a Middle State; which
I hope will neither prove a *Popish*
nor a *Protestant* Purgatory.





A
CURSORY VIEW,
OF THE
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VERY Person that knows any thing of the Laws and Usages of the other States of *Europe*, must know, That we have our Fieffs or Tenures in common with them : And that those Customs were brought in by the Floods of barbarous Nations that, in the Sixth Century, came from the North (which *Pliny* terms, *Officina Gentium*) ; and, breaking in upon the

B *Roman*

Roman State, tore it to Pieces, and divided it among themselves.

Their Chiefs, or Leaders, gave such Parts to their Soldiers and Followers for their Services, as they thought fit, and for such a time; without any other Consideration, than only taking their Oaths to be faithful to them; and for their being always ready to serve in their Wars.

These, being a mix'd Multitude, consisting of *Goths*, *Franks*, *Lombards*, &c. the Chief of each chose the Place he liked best: The *Lombards* took Possession of *Italy*; the *Franks* of *France*; the *Goths* of *Spain*; out of which Places they drove all before them.

But tho' these Customs were brought in by *Barbarians*; they so well suited the fierce and warlike Genius of those, and even of After-Times, and brought with them such a Train of Grandeur, Power, and Profits, to the *Chiefs*, that they were soon embraced by all the Princes of *Europe*; And the *Turks* have some of them to this Day in their original Rudeness.

These *Customs*, from a very plain and simple Original, were in time so improved, increas'd and embellish'd, with new and solemn Forms, that they made a new Body of Law, termed every-

every-where, *The Jus Feudale*; by the Principles of which all the Land-Estates in *Europe* were settled, and stand on that Foundation to this Day; though in many Things much altered in some Places.

This new Scheme for settling the Land-Interest was quite unknown in the old *Roman* State: And though they had their *Jus Emphyteosis*, yet that differed quite from the *Feudal Contract*, and was only a Species of *Location*, for a Part of the Fruits in *Spécie*. But, in the *Feudal Contract*, almost every thing is new, and was never heard of before; *viz.* By which both the *Grantor*, and the *Grantee*, had a Property and Dominion in the same Parcel of Land. The *Grantor's* reserved Interest; was termed the *Dominium directum* of the Estate, and the *Grantee's* but *Dominium utile*. To both these Dominions several great Interests and Advantages were incident and belonging: To the *Dominium directum* it belonged to have the Estate he granted to himself again, if the *Grantee* became incapable to perform the Services, *viz.* by his Death or Disloyalty; and that for a time, or for ever, in proportion to the Incapacity or Delinquency of the *Grantee*, on which many other Powers and Perquisites followed, as we shall see more particularly afterwards.

To the *Dominium utile* of the Grantee it belong'd to have the sole Power and Profits of the Estate, while he was capable to do the Services, and behaved with Loyalty to his Benefactor.

He that had the *Dominium directum* is termed *Lord* or *Superior* of the Lands granted: And the Person to whom the Grant is made, is termed the *Vassal*, or the *Tenant*; and that on account of his *Holding* his Estate of his Lord or Superior.

Another Thing new and peculiar to the *Feudal Contract*, is—The Lord's binding his Tenant to his Fidelity to him, by a most solemn Oath, which we in *England* term *Fealty*, from the *Latin* Word *Fides*; and, from that, his Estate is termed *Feodum* or *Feudum* in *Latin*, which we render *Pee*, the *Germans* Fieff, &c.

Here it is remarkable, that though the *Feudal Contract* is understood for the most solemn Attachment, and Act of Amity between the Lord and his *Vassal* that can be imagined, and the *Vassal* bound on his Part, by a solemn Oath, to serve; yet, according to the *Feudal Usage*, the Lord takes no Oath to protect his *Vassal*. Notwithstanding which, if the Lord fails to be friend and protect his *Vassal*; by *Feudal Usage*, the *Vassal* becomes absolved from his Allegi-

Allegiance, by reason of the implied Breach of the mutual Friendship that ought to be between the Lord and him.

As these Contracts were but plain and simple at first, they were commonly made but for One Year; but afterwards for the Life of the *Vassal*; then to his eldest Heir Male; then to all his Heirs Male, one after another; and at last to all Heirs whatsoever, and so became Estates of Inheritance, but subject to many Duties and Forfeitures; as where the *Vassal's* Heir was an Infant, and incapable to perform the stipulated Services, both He, and his Estate, were in the *Ward* or Keeping of his Lord, till he became of Age. The *Vassal* might not marry without the Consent of his Lord: He might not alien his Estate to a Stranger, &c.

All these Things are Generals in the *Feudal Law*: But as these, and other Things depending on them, make such a large Part of our Laws in *Britain*, we must consider them more particularly.

When those Usages were first brought into *Britain*, it is not very material to inquire, nor whether first in Use in *England* or *Scotland*; but many Instances might be given of their having been, in Part, here, before the *Conquest*; and then they came into *England* in a full Body,
accord-

according to the Customs of *Normandy*, and declared to be *the Law*; with such Parts of the old Laws only, as the *Conqueror* found to be of Advantage to himself. And here they may be said to have reigned in Force till the 12th of *Charles II.* of which more hereafter.

Though those new Customs, and the Suppression of the Old, were grievous to many; they were not quite so to the great Men, who, having the greatest Part of the Land in themselves, they found it for their Interests (*Regis ad exemplum*) to give out their Lands to others in the same Way, to be Holden of them, by *Fealty*, with all the Train of Grandeur, Powers, and Profits, attending such Settlements.

By these means they increased their Powers to such an Height, that but a few of them, combining together, were able to shake *the Throne*, and sometimes even to vacate it: Witness the memorable *Barons Wars*. And, indeed, one may say, the Struggle continued between the Crown and them, in some Shape or other, under various Events, till the Reigns of *Henry VII.* and *Henry VIII.* when Settlements were broken in upon by Fines and Recoveries, which divided the Land-Interest into many small Parcels, and into many weak Hands. And so the *Lords*, like *Samson*, when his Locks were cut off, became again *weak, like other Men*.

Now

Now the Scene was changed ; the Crown soon got the better ; and the only Reliefs for Grievances were Prayers and Petitions: Whereas some had been gain'd before by the Beneficence of good Princes, and others were forced from them during their Struggles with the Barons, as *Mag. Chart. de Forest. &c. &c.*

The *Feodal* Duties, Services, and Profits, arising to the Lords from their Tenants, were easy, and even reasonable, when *Fees* were free Grants ; that is to say, That the Estate granted should return to the *Grantor* ; when the Tenant's Heirs fail'd, or were not capable of performing their proper Services ; or when any of the Tenants fail'd of their Duty by Ingratitude and Disloyalty to their Lords: Hence arose the Perquisite of the *Tenant's Escheat*, the *Ward* of the Tenant's Infant Heir ; that he might be train'd up for the Feudal Services: Neither was it thought unreasonable, that the Lord should have the Rents and Profits of his Tenant's Estate, during his Nonage, for his Maintenance according to his Quality ; and the rest, to provide himself with a Man, to do the Service, which was chiefly Military.

Even the Year's Rent of the Tenant's Estate, when he came of Age, termed his *Relief*, was not unreasonable, for the Lord's Care of him
during

during his Infancy, and an Acknowledgement of his having his *Estate* from him.

The *Duty of Marriage* was likewise considered, as in Part necessary for the Lord's Safety; lest if the Tenant should marry without his Lord's Consent, he might take a Wife out of a Family quite at Enmity with his Lord and Benefactor.

The other Duties, of *Escuage*, of paying an Aid to making the King's eldest Son a Knight, and for marrying his eldest Daughter, were but casual Charges, and tolerable Gratuities.

So that, in that State of the *Fees*, the legal Duties could not be termed Grievances: But they were after exacted with too much Rigour, and much beyond what the Law allowed of, by the King's Officers. *Glanville* says, that, before the Statute of *Magna Charta*, "The Abuses were very great; the Laws not observed, but the *Feodal* Duties levied at Will and Pleasure, according to what the Court wanted; which were termed *Rationabilia*, as being but Reasonable for the Support of the Royal Family *." And many new Things were claimed, as incident to the King's Prerogative.

Those

Those *Feodal Duties*, and the Abuses of them, lying principally on the Lords, who held almost all the Lands of the Kingdom of the Crown; they made many grievous Complaints, and sometimes obtained some Relief.

By *Magna Charta*, c. 2. the *Rationabile Relievium* was discharged, and the *Antiquum* restored, which at that time was the Fourth of the Tenant's yearly Rent: A *Knight's Fee* was reckoned Twenty Pounds a Year; the Fourth of that was Five Pounds for his Relief. A *Barony* was reckoned Thirteen Knights Fees, or Four hundred Marks a Year; the Fourth of which was One hundred Marks: His *Relief*: An *Earldom* consisted of a Barony and an Half, or Twenty Knights Fees: The Fourth of which was One hundred Pounds: His just Relief.

By *Ditto*, c. 5. and 6. Wastes of the Infant Heir's Estates, and other Exactions and Abuses, are likewise provided against; but to little good Effect: Though, by the Eighteenth of *E. I.* Sales and Alienations of Estates were permitted (contrary to the original *Feodal Usage*), and by the Statutes of *H. VII* and *H. VIII.* Settlements broke in upon by the *Fines* and *Recoveries*; all the *Feodal Duties* and Services and Forfeitures, nevertheless, were saved and reserved to the Lords as before, from the original Tenants: And lay much heavier on the

new than before on the old ; who having their Estates in Effect for nothing, the full Charges, and even the Forfeitures of them, might easily be borne with, in Comparison of those who paid the Value for them : And yet under all these, they were forced to hold them, or not have them at all ; for the Crown having nothing for its Support, but the *Domain Lands*, the Custom for Export and Import, and the *Feodal Rents* and *Advantages* accruing from the several Tenures, as *Wards*, *Marriages*, *Reliefs*, and *Forfeitures* of the Tenants, it would abate nothing on any Consideration whatsoever.

The great Estates of the great Men having, by the Ways and Means above-mentioned, been purchased and parcelled out to every Person that could buy ; these Weights and Grievances became general, and of course the Complaints so too.

By Statute, the Purchaser was obliged to hold the Lands as his Lord held over : So, if a Purchaser for Value left at his Death a Son and Heir, an Infant of a Year old, the Lord had the Wardship of him, and the Benefits of his Estates to himself for Twenty Years thereafter : A whole Year's Rent for his *Relief* : And a Power to marry him to whom he pleased ; with the Danger of losing his Estate for some light and trivial *Feodal* Offence pretended to,
by

by some Neglect of Duty to his Lord, from whom he never received any special Favour, or Act of Grace whatsoever, and to whom he was as indifferent as to another Man;

- Add to all these Considerations, the Lord's Power by Law of demanding Inspection of his Tenant's Title-Deeds when he pleased; and if he had them not to shew, his Lord took the Estate in Right of his *Dominium directum* in it.

Every body knows the many Casualties Deeds are liable to; and, though extant, they may not be in the Owner's Power to produce; and, if they are, it may be inconvenient to produce them for fear of vexatious Suits, and other Inquiries by ill-designing Persons, &c.

It is reported, both by our Historians and Lawyers, of the great Earl of Surry, in E. I. Time; that, being summoned to produce his Titles in a *Quo Warranto*, he boldly, in the Face of the Court, put his Hand to his Sword, and said—THIS IS MY TITLE, AND BY THIS I WILL MAINTAIN MY TENURE: On which, even that high-spirited and most daring Prince durst then go no farther with any in that way; but, in the Tenth Year of his Reign, he found himself obliged (though he termed it an Act of his Grace) to pass the *Quo Warranto* Statute, in favour of those who

were in Possession of any Franchises or Liberties: Which afforded but little Relief; for with respect to Lands, the *Quo Warrantos* went on as before.

To complete all these Hardships on the Tenants; but especially the purchasing Tenants; a *Court of Wards and Liveries* was erected; in which, for the King's Interest, and for the *Commodum Curiae*, the Crown - Tenants were almost scraped to their Bones; upon which my Lord Chief Justice *Coke* made the following remarkable Paraphrase:

“ Touching Liveries (which in those Days
 “ were general) what a world of Trouble the
 “ Subject suffered for missing Livery, in re-
 “ spect of pretended Omissions, and the
 “ like! What charging the Subjects with
 “ Values, not found by any Office; nor ap-
 “ pearing by any *Melius Inquirendum!* with
 “ mean Rates; where none were, and the like;
 “ these not recoverable in a *Course* of Law,
 “ but by sending for the Parties by Pursui-
 “ vants; and, by their awful Countenances,
 “ mixed with Menaces and Threats, drew
 “ them to Compositions, which, with other
 “ Oppressions and Injustice, filled *H. VIIth's*
 “ Coffers so, as by the Closs-Roll in *H.*
 “ the *VIII's* Time, appeared to be left by
 “ his

“ his Predecessor, no less than Fifty-three
 “ hundred thousand Pounds in Gold.”

Complaints on *Feodal* Grievances became so general and loud, as induced King *James* the First, in the Eighteenth Year of his Reign, to give Orders to have it moved in *Parliament* on his Part, that, on settling and assuring to him, and his Heirs and Successors, the Kings of *England*, a competent yearly Rent, he would consent, that *all Wardships, Premier-Seisines, Reliefs, &c.* for Tenures *in Capite*, should be discharged: And a Proposal or Plan was made for it; *viz.*

“I. That all Lands and others should be held of the King by Fealty only, as of some Honour, and for such Rent as was then due.

II. That all Lands, holden of Subjects, should be holden by Fealty only, and such Rent as was then due.

III. That all the Subjects should be disabled to take any Land, &c. of the King by any other Tenure than by Fealty only, and a yearly Rent, as of some Honour.

IV. That, in Consideration of the said Discharge and Freedom of the Subjects, and their Posterities, and they being also discharged of
 Fines

Fines and Licences of Alienations in respect of Homage, and Fealty, and Relief; a competent Rent be assured to the King, his Heirs and Successors, Kings of *England*; of a greater Value than he, or any of his Predecessors, had for them all; which Rent to be inseparably annexed to the Crown, payable at the Receipt only.

V. That a competent Rent be assured to Lords of the Fee, for every Knight's Fee; and so rateably.

VI. That Commissioners be appointed for finding out the Tenures of the King, and the Subjects.

VII. That Idiots and Madmen be in the Custody of their Friends.

VIII. That Provision be made for regulating Guardians in *Socage*; and that the Ancestor may appoint Guardians, &c.

IX. That Provision be made for the Lords the Bishops, that they shall be Lords of Parliament, notwithstanding their Baronies are holden in *Socage*, &c.

But though such a Regulation was so much wanted and wish'd for by all good Men; the
Motion

Motion took no Effect, neither in that King's Reign, nor in that of his unfortunate Son's.

However, Long look'd for came at last : By Statute of 12 Ch. II. *cap.* 24. the *Wards, Liveries, Premier-Seisines, Relieffs, &c.* were discharged, and all Tenures reduced to *Common Socage* ; The Heads of which Statute (as it is the *ultimum quod sic*) I shall here set down, for Example's sake, and for the Ease of others.

“ I. The Court of Wards and Liveries, and
 “ all other Wardships, Liveries, Premier-Seisines,
 “ and Ouster le Main, Values and Forfeitures of
 “ Marriages, by reason of any Tenure of the
 “ King, or of any other, by Knight-Service,
 “ and all mean Rates, and other Gifts, Parts,
 “ Charges, incident or arising, for Ward-
 “ ships, Premier-Seisines, or Ouster le Main,
 “ be taken away ; and all Fines for Aliena-
 “ tions, Tenancy by Homage, and all Charges
 “ incident, or arising, for Wardships, Livery,
 “ Premier-Seisine, or Ouster le Main, or Tenure
 “ by Knight - Service, Esçuage, and also all
 “ Aid *pur File marier, pur faire Fitz Cheva-*
 “ *lier,* shall be taken away ; and all Tenure
 “ by Knight-Service of the King, or of any other
 “ Person, and by Knight-Service *in Capite,*
 “ and by *Socage in Capite,* as of the King,
 “ and the Fruits thereof, shall be taken away :
 “ And all Tenures of any Honour, Manor,
 “ Lands,

“ Lands, Tenements, or Hereditaments, held
 “ either of the King, or of any other Person,
 “ shall be turned into Free and Common
 “ Socage.

“ II. The same shall be for ever discharged
 “ of all Tenure by Homage, Escuage, Voyages
 “ Royal, Wardships incident to Tenants by
 “ Knight-Service, Values and Forfeitures of
 “ Marriage, and all other Charges incident to
 “ Knight-Service.

“ III. All Tenures to be granted by the
 “ King of any Estate of Inheritance, at Com-
 “ mon Law, shall be in Free and Common
 “ Socage.

“ IV. This Act shall not take away any Rents
 “ certain, Heriots, or Suit of Courts, incident
 “ to any former Tenure now taken away, or
 “ other Services incident to Tenure in Common
 “ Socage, or the Fealty and Distress incident
 “ thereto; and such Relief shall be paid, in re-
 “ spect of such Rents, as in case of a Death,
 “ in Tenure in common Socage.

“ V. This Act shall not take away Fines for
 “ Alienations due by particular Custom of
 “ Manors, other than Fines for Alienations of
 “ Lands holden immediately of the King
 “ *in Capite*.

“ VI.

“ VI. This Act takes not away Tenures in
 “ Frank Almoign, nor those by Copy of Court-
 “ Roll, nor to take away the honorary Service
 “ of Grand Serjeanty.

“ VII. This Act does not infringe any Titles
 “ of Honour Feodal, by which any Person has
 “ Right to sit in the House of Lords, &c. &c.”

Now, concerning the *Fees* and *Vassalages* in *Scotland*: They are much the same with what they were in *England*; for though Mr. *Craig*, in his learned Treatise *De Feudis* (a Book of great Authority and Esteem, both at Home and Abroad), has fully cleared and proved, that there were in *Scotland* the Laws of *Wards* *Marriage*, and other *Feudal* Rites, before the *Conquest of England* by the *Normans*, by whom they were brought in there, in a full Body, according to the *Customs of Normandy*; yet my Lord *Stairs*, in his *Institutes of the Laws of Scotland*, makes no Difficulty in acknowledging, that the Body of the *Feudal Law* was, by Occasion of the *Vicinage*, taken from the *English*; and indeed they resemble one another so much, that in the most material Parts the one seems to be a mere Transcript of the other.

But I believe, as Mr. *Craig* asserts, from good Authority, that there were some Branches of the *Feudal Law*, in Use in *Scotland*

at the Times he mentions ; which probably were derived from *France*, especially those of them which concerned the Crown ; which might be occasioned by the many Leagues and Intermarriages in the Royal Families of *France* and *Scotland* ; yet, with respect to the whole Plantation of them, I believe my Lord *Stairs* was in the right.

In *Scotland*, as in *England*, the *Dominium directum* of all the Land of *Scotland* is in the King ; and all the Subjects Rights and Interests in the Parts they hold, but *Dominium utile* : He is the Head Superior, of whom, mediately or immediately, all the Subjects hold their Estates in the *Feudal Way*, viz. by Homage and Fidelity, and for Services and Duties to be performed. The Vassal or Tenant's Estate is termed his Fee, from the *Latin Word Fides*, imply'd in his Solemn Oath ; which, by Abbreviation of the *Latin Word Feudum*, is commonly called *his Feu* in their Stile.

Instead of *Lord* and *Tenant*, the *Scottish* Lawyers use *Superior* and *Vassal* ; and if the Vassal gives out any Part of his Estate to others, these are termed Sub-Vassals.

In Right of these two distinct Dominions of the Superior and Vassal, each has his different Benefits and Emoluments arising from the same Estate :

Estate : The King, by virtue of his Superiority and Prerogative, has many Rights and Advantages coming to him, that other Superiors have not; as the Right of *ultimus Hæres* to all Lands to which no Heir can be found; to all Royal Mines, &c. Others he has in common with other Superiors.

The Perquisites and Advantages due to all Superiors are reckoned from the different Holdings; The Holdings or Tenures in *Scotland* are of Four Sorts; viz. *Ward-Holding* : *Feu-Holding* : *Blench-Holding* : And *Burgage-Holding*.

Ward-Holding is the only proper Holding (the others but improper, as the Feudalists speak, or Holding *per servitium militare*; which was the first Design of them, as was said in the Beginning. To this belongs the Wardship of the Vassal's Infant Heir; and the Profits of his Estate during his Minority; Relief; Marriage, &c. as by this Tenure in *England*.

Special *Feu-Holding* is, when the Vassal is to pay only a Sum of Money, or something else, *Nomine Feudi Firmæ*.

Blench-Holding is, when the Vassal is to pay a small elusory Duty, by way of Acknowledgement of his Holding: As a Pair of Gloves,

a Peny - Money, &c. *Nomine Albæ Firmæ*: And regularly these Duties cannot be levied, unless demanded in one Year after due: But the *Blench-Duties* belonging to the Crown; at least such as can be valued, are valued and exacted in the Court of Exchequer, whether demanded within the Year or not.

Burgage-Holding is, where a Borough is to pay the Duty contain'd in their Charter of Erection: In this the Borough is the Vassal, and not the particular Burgeffes.

Besides these common Duties to which the Vassals are liable; to the Superior belong the Forfeitures and Escheats of them when they fall, *viz.*

I. If the Vassals marry without Consent of their Superior, he has the double Avail of the Marriage: And in triple Avail, if contrary to it.

II. If the Vassal aliens his Estate without Consent of his Superior, he forfeits his Estate; which Forfeiture is term'd *Recognition*: But this has been in later Times altered: And Leave given to the Vassal to sell or incumber the one Half: And the Superior is intitled to One Year's Rent of the Part sold, for accepting of a strange Tenant or Vassal.

III. In

III. In *Fen-Holding*, if the *Fen-Duty*, tho' ever so small, is not paid in Two Years Time, after it became due, the whole Estate is lost: And that by the Nature of the *Feudal Contract*, though no such special Clause of Forfeiture is in it.

IV. If the Vassal denies his Superior, he loses his Estate; which is termed a *Disclaimer*.

V. Where a Vassal is guilty of any Incroachment upon his Superior, it is *Purpresture*.

VI. Besides these Forfeitures which arise to the Superior, through the Vassal's Neglect of Duty, or Acts of Disloyalty; there are others of a very grievous and weighty Concern; by which the Vassals are Losers without any Pretence of a Fault committed against the Superior: And yet he gains by them. I mean the Vassal's *Liferent-Escheat*. The Word *Escheat* has much the same Meaning in the Laws of both Parts of the Kingdom; and is derived from the *French*, *Echute*, signifying fallen: Though in the Law of *England* it is chiefly used to signify the Failing of Heirs, and the Return of the Estate to the Grantor; but in *Scotland* it signifies the Forfeiture of one's Estates real and personal, for a Contempt of the Laws: And even where it is not in the Parties Power to obey them.

These

These *Escheats* are divided into *Single-Escheat*; and *Liferent-Escheat*. By the *Single-Escheat*, all a Person's Moveables, or personal Estate, is forfeited to the King for ever: And by the *Liferent-Escheat*, the Rents and Profits of a Person's whole real Estate, during his Life, is forfeited and belongs to his Superior of his Lands: Both these Forfeitures happen after this manner; *viz.* If a Vassal owes a Debt of the smallest Value; and is sued for it to a Judgment, or Sentence; and does not pay in a certain Time thereafter (commonly 15 Days, and sometimes but 6 Days); he may be proclaimed ~~or~~ *denounced* (as it is termed) at the Market-Cross of the Jurisdiction, by Three Blasts of a Horn; by which he immediately forfeits all his personal Estate to the King; subject to the Payment of the Debt sued for: And if the Debtor neglects to pay in one whole Year after the *Denunciation*, he forfeits all the Rents and Profits of his real Estate during his Life; which go to his Superior by *Feudal Right*, and common Usage, for all that time: Neither of these Forfeitures can be reversed, if the legal Diligences have been regular: In which they differ widely from our *Outlawries*; which may be reversed, for a very little; and on any colourable Excuse.

These

These severe Penalties, for Contempt of the Law, must, no doubt, have been invented in very rude and lawless Times, when the Great ones oppressed the Little ones at their Pleasure, and when they invaded and slaughtered one another, without Fear of Punishment; and were too strong both for the King and his Laws: Which is not the Case now, nor has been for many Centuries; and yet these Severities continue, and in daily Practice, as often as any Person is so unfortunate as not to be able to pay his Debt; and that, though the Vassal has committed no Act of Disloyalty, nor has omitted any Part of his Duty, or Services, to his Superior, yet he gains the Profits of his Vassal's real Estate during his Life.

As I observed before, a great Addition to the Weight and Burden of the *Feudal Duties*, Casualties, and Forfeitures, arises to, or falls on, the present Vassals from the great Change made in the Nature of their Fees, from free Gifts to common Purchases.

It is likely, when Fees were first granted, the Duties and Services were so far from being reckoned burdensome, that they even delighted the Vassals themselves: The King's Revenues were employ'd to entertain a great Court of his Vassals; who, in those Days were said to be, *In Pace Decus, et in Bello Præsidium*: And the
same

same Humour reign'd in the Courts of the Nobility ; who seldom travelled abroad, without a Troop of their Vassals with them ; who all fared well : But when their Estates, which they got so easily, were changed to hard Purchases ; that Hospitality was at an End : And every Purchaser was willing to make the most of what he had ; by improving his Estate, and perhaps selling it to another, as another mercantile Subject ; as he might, for a Moiety, do : The Attachment between Superior and Vassal, under the former Scheme, was in Effect dissolved : And when the Vassal became in Debt above what his Moveables could satisfy, a Method was found out, by which the Lands which he could not voluntarily dispose of might be apprifed, or adjudged by the Lords of Session to his Creditor for Payment of his Debt ; redeemably, in a certain Number of Years : and the Vassal's Superior was forced to admit him, on receiving one Year's Rent of the adjudged Lands, for being obliged to accept of a Stranger for his Vassal : And tho' by those voluntary Sales, and likewise by these involuntary, by Comprisings and Adjudications, the Vassals were changed ; there were no Changes in the *Feudal Duties*, payable to the Superior ; nor of the original *Feudal Forfeitures* : Nor are there to this Day ; which must lie very heavy on the new Vassals, and their Families ; who paid Value for what they hold.

That

That which makes these *Feudal Burdens and Forfeitures* still more grievous, is, — That when any of the Vassals happens to be so unfortunate, to leave his Heir only a Year old, when he dies, his Superior, in *Ward-Holding*, shall enjoy his Child's Rents of his Real Estate (which he purchased for Value) for Twenty Years thereafter: Or, by another Piece of ill Luck, not be able to pay a small Debt; for which he was put to the Horn; when the Days of the Charge were running; nor for a Year after; by which, one *Escheat* falls to the King: And the other to his Superior; perhaps the King: And he, as usual, makes a Gift of one or t'other; or of both; to some Favourite. In such Cases, the *Vassal* and his Family must be undone, in Course: And that this is the Practice, all the Gentlemen of that Country know; and some of them too well.

I have heard it reported of the late *King William*; That, having been apply'd to, for a Gift of some unfortunate Gentleman's *Escheats*; Single and Liferent; he desired to know, what was the Meaning of them: And, being fully informed of the Natures of both of them; he, repeating the Word *Escheat*, gloriously
E told

told the Petitioner,--- *He thought they were both Cheats.*

I mentioned another Hardship before, incident to all Tenures, and common to both the *English* and *Scotch Vassals*: And that is, the Power the Superiors and Lords have of making them produce their Titles when they please. I made mention above of the bold Speech made by the Lord *Warren*, Earl of *Surry*, in a *Quo Warranto* brought against him at the King's Suit; I may add what my Lord Chief Justice *Coke* says of this Principle of the Law: — “ It was a legal Course; but a Matter of
“ great Rigour and Extremity; invented and
“ eagerly followed, by the King's Officers; to
“ the general Distaste of the whole Realm.”

That it is a legal Course, all Lawyers must admit: For the Superior must always be in-
fessit himself, in the Estate; before he can in-
fessit his *Vassal*: So that the *Vassal's* Estate is his, not only *Jure Domini directi*; but *Jure pleno*: If nobody else can shew any Title to it; for *De non-entibus, et non-apparentibus, idem est Judicium*; yet it is hard, and harder now than before, that a Man should lose his Estate, because his Titles are lost; or not in his Power to produce; and perhaps not very convenient to be shewn, if he could, as was
observed

observed before: And yet the Court of Session will declare them void, if they are not produced; and decree the *Dominium utile* to belong to the Superior, who, being infeft before, has nothing to do but take Possession.

This Point of Grievance lies harder on the *Vassals* in *Scotland*, than ever it did on the *English* Tenants: In *England*, Civil Causes, as well as Criminals, are try'd by Juries, before whom a Right may be maintained, on the Testimony of Witnesses, of a peaceable and uninterrupted Possession beyond the Memory of Man; without being supported by any Deed or Writing: Whereas, by the Law of *Scotland*, immemorial Possession, without a Title-Deed to support it, avails no Man, if it is ever so strongly proved, by the Testimonies of Witnesses, *omni Exceptione majores*, to have been peaceable and uninterrupted, beyond the Memory of the oldest Man living.

This is so certain, that though a *Seisine* (which is one of the greatest Solemnities used in the Law) be done by the Delivery of Earth and Stone, on the Ground of the Land, by the Party Giver, or his Attorney, specially authorized, to the Party Receiver, or his Procurator, in the Presence of several credible Witnesses, and in the Presence of a Notary Public, who ex-

tends a formal Instrument, of the whole Proceeding; which he attests, and is delivered to the Party; yet all that, though cloathed with immemorial peaceable Possession, shall not make a good Title, or be credited, without producing a Title-Deed, and a Warrant from the Disposer to give the *Seisine*; and to warrant the Attestation of the Notary Public; without which, his Instrument is taken for a mere *Affertio Notarii*.

So that, if the Possessor has lost, or mislaid his Deeds and Instruments, he may lose his Estate, though ever so much improved: And the more improved, the greater may be the Superior's Desire of having it, and consequently of his taking Occasion to bring his fishing Action of Exhibition of Writings.

It's true, the *Liege Vassals* have less Reason to fear any thing of this Sort, than others: The Difference between the *Feuda-ligia* and others, is ——— The *Feuda-ligia* are those holden of Sovereigns, acknowledging no Superior, but God, by whom Kings reign: The others are, those holden of Subjects, or Princes less than Sovereigns. It may be said to be below the Dignity of the Crown, to take such Advantages; especially under religious Princes: Yet I read of a Prince of a State famous for Religion,

ligion, who coveted a poor Man's Vineyard; and, in order to come at it, took away the Life of the Owner; which he might, with a better Grace, have done, if the *Feodal Dominium directum* had then been in Fashion.

But, be that as it will, it's too well known, that Proceſſes of Exhibition, on this Head, have been, and ſtill are, very frequent: And that for the *Vaſſals* not having their Deeds to produce, the Superiors either take their Eſtates from them, or bring them under hard Compoſitions, before they will grant them their new Charters: And I remember two Caſes, where the *Vaſſals*, who had made great Improvements on their Eſtates, and at great Charges, who having Decrees given againſt them by the Lords of Seſſion, purſuant to this Principle of Law; conceiving ſome Hopes of Relief from the Parliament of *Great-Britain*; brought their Appeals to the Right Honourable the Houſe of Peers, (in both which I had the Honour to be of Counſel with the Appellants, and I think I have the Caſes now by me); but the Decrees in both Caſes were affirmed; which, indeed, could not be otherwiſe, as the Law ſtands; for, as the Civil Law has it, *Judex Jus dicit, etiam cum inique dicit*: And in another Place, --- *Durum ſane; ſed ita Lex ſcripta eſt*.

THESE

These are the Hardships and Discouragements, which the Vassals in *Scotland* are now under, by their Holdings.

I know there are some Persons in *Scotland*, and in other Places, so attached to Antiquity, that they cannot bear to hear of Changes, even for the better; but the old Saying is just and Orthodox, — *Non est Pudor ad meliora verti.* — The *English* were, no doubt, pretty easy under their Tenures, while their Estates continued in their primitive State, of the Nature of free Gifts; but, when they altered their Natures to Purchases, as we have observed, they felt the Servitudes and Forfeitures incident to them, more than they could bear: And yet could they obtain no Relief till the Statute of *Ch. II.* before quoted.

Since the Reductions of the Tenures in *England* to common Socage, and the Tenants were freed from the Servitudes, and Dangers of losing their Estates on Pretences of Feodal Forfeitures, the Lands have been improved so, as, in many Places, to yield the Double of what they did before, and far beyond what they did before every-where.

So that, if a good Precedent has any Power, I should think, those of *Scotland* should be so far

far from opposing a Reduction of the Holdings, that they could covet nothing more.

The Tree is known by its Fruits. The like Causes may produce the like Effects: New Evils require new Remedies: And the Change that has happened in the Nature of the Fees having changed the Servitudes from easy, almost to intolerable; some Remedy ought to be thought on.

But though Evils may be great, and much felt by many; it may, sometimes, be no easy Matter, to fall upon proper Remedies: For some Cures are worse than the Disease; and often the Remedy kills, when the Disease would not.

In the Reduction of the Holdings, and abolishing the Vassalages, the King's Interest, as well as the Subject's, is in the Question; and then the Affair between the Subject-Superior, and his Vassals: And each will expect to have his Interest considered in so general a Concern; and that with due regard to the standing Laws.

I know there are some who treat all these Considerations, as Things of no Difficulty at all. I have seen a Pamphlet, since I wrote what is above, intituled, *A Letter to an English Member*

ber of Parliament, &c. for taking away the *Scotch Vassalages*; “ As being useless, dangerous to the State, and so cruel and hard upon the *Vassals*, that they are inconsistent with Christianity; and what Heathens would be ashamed of.”

After his having touched some of the Hardships which lie upon the *Vassals*; in order to give some Satisfaction to the Superiors, for what they are to lose by having them taken away, he says, “ These who have *Feu* or *Blench Duties*, ought to have some Equivalent for them. But, as to those whose *Vassals* hold Ward, they ought to have nothing for them at all, as being unchristian Exactions, and which were only temporary, and are now useless.” However, finding his Scheme somewhat opposed by the 20th and 18th Articles of the *Union*, he tells us, “ The *Union* was made in Haste, and with particular and secret Views: And though these Articles are said to be unalterable; yet they are not so unalterable, as the Articles which concern our Churches: And the 18th is expressly alterable, for the evident Utility of the Subjects of *Scotland*: So, with respect to these Objections, he says the Answer is easy.”

The

The Words of the 20th Article are, ---
 “ That all Superiorities, Heretable Jurisdictions;
 “ Offices for Life, and Jurisdictions for Life,
 “ shall be reserved to the Owners thereof, as
 “ Rights of Property, in the same Manner,
 “ as they are now enjoyed, by the Laws of
 “ *Scotland*, notwithstanding this Treaty.”

The 18th Article runs thus, — “ That the
 “ Laws concerning private Rights shall re-
 “ main as before, and *unalterable*; except for
 “ the evident Utility of the Subjects of *Scot-*
 “ *land*”.

To answer both these; to say, with our Au-
 thor, *The Union was made in Haste, &c.*
i. e. rashly and inconsiderately; would be
 charging the Wisdom of both Nations with
 Folly; or, that it was gone into with secret
 Views, otherwise than what the Articles (in
 common Understanding) were intended for,
 would be arraigning those who had the Make-
 ing of it, with Disingenuity and Dishonesty;
 and making that solemn Contract only a Piece
 of *French Finesse*, in one of the contracting Par-
 ties, to get the other into its Clutches, to be
 disposed of, as that Party pleased.

As both of these are seemingly false, and
 unbecoming the Dignity both of the Treaties,
 F and

and the Acts of Parliament confirming them ; there ought, in my humble Opinion, some better Apology be thought on, for breaking in upon these Articles, than our Author seems to have light on.

As to the first, viz. the great Hardships that the Vassals lie under ; he and I are both of one Opinion ; though not quite for the same Reasons, as appears by what I have said above ; but I cannot, with him, term the Feodal Services unchristian, and what Heathens would be ashamed to use ; especially in their original Constitutions, when such Grants were undoubtedly special Favours ; and they who got them were justly termed every-where, the *Beneficarii* : And if such Services deserved the Name of unchristian Usages, *England* was, and continued to be, a very unchristian State, from the Conquest quite down to the 12th of Ch. II. and much more so than *Scotland* ; as may fully appear by the few Quotations I have taken from *Glanvil*, and my Lord Chief Justice *Coke*.

The next Reason the Author gives for taking away the Superiorities, is, for that they were only Temporary, and are now become useless ; the Safety of the Country being fully provided for by a standing Army.

The

The Superiorities and Jurisdictions are, by the Articles of the Union, declared to be Rights of Property, as they really are; and they have been secured to them that held them, from the first Foundation of the State. ----- In what Propriety of Speech then can Grants to a Man, and his Heirs for ever, be termed Temporary Things? And as for their being now become useless for the Safety of the Country (that being now sufficiently guarded, as our Author thinks, by a standing Army paid by the Country), I think that Point is not universally agreed upon. ---- Some think that the Defence of the Country is more to be trusted in the Hands of those who have a real Interest in it, than in the Hands of Mercenaries, as some late Occurrences plainly shew: And I think the old standing Word in *Holland*, when it's invaded, is, *Vight for Vaders Landt, Vight for Vaders Landt*: And that we see they do. But be that as it will: I hope the Letter-Writer will allow, that Services alone are not all the Interest that a Superior has in his Vassal's Estate: There are, beside, due to him, a great many other Benefits and Casualties arising to him out of it; beside the Reversion of it on several Occasions: So that this seems to be a Reason quite void of Reason,

His principal Reason, as I think, is : That such great Leadings, as some of the Chiefs have, have often endangered the Safety of the State, and the Peace of the Country.

This, indeed, has sometimes been the Case ; but more frequently the great Men have saved it, and all the Liberties of their Fellow-Subjects with it, both in *England* and *Scotland* ; And I believe nobody will deny, that the Stand made by the loyal great Men, and their great Leadings, was a principal Means of our being saved in the late Affair : And why we should punish the Righteous for the Wicked, and disable them from serving us, I cannot imagine.

The Author has discovered another Inconveniency that such a Power in the Superiors Hands may occasion ; *viz.* by their joining with an evil-disposed Sovereign to rob us of our Liberties, and establish Tyranny.

This, I think, is straining hard for a Reason : For, by taking away all the Power of the Superiors, and vesting it in the Sovereign ; such a Sovereign as our Author figures to us, would have the whole and immediate Power in himself, to tyrannize without Controul, and without being obliged to borrow from, or hire
the

the great Men, his Vassals: So here, *Incidit in Scillam cupiens vitare Charybdin*; or, as we say, *To help him out of the Frying-pan into the Fire.* ---- *Caret eventum nimius furor.*

From these his Considerations, he thinks it just and necessary to have the Superiorities, and Heretable Jurisdictions, taken from the Proprietors, and vested in the Crown; and (which is strange) without allowing them any Consideration for them; at least for such of them as are of any Value to them.

But, that I may not be thought to speak without Book, in a Thing of such Consequence, I shall repeat his own Words for it: --- "As for the yearly Feu-Duties in Feu-
 " Tenures, I own that they ought to have
 " Compensation for them; but, as for Ward-
 " Holdings, and the Casualties thereof, they
 " are so barbarous, absurd, and unjust in their
 " own Nature, that 'tis a Shame and Re-
 " proach they should be continued in a Chri-
 " stian Nation." *Page 25.* And, in *Page 26,*
 " These Ward-Holdings ought to fall, and
 " no Price can be demanded justly for them."

In Speeches without Doors, Authors may throw out what comes uppermost, and without regard to either Justice or Truth; but I thank God, there always has been, and I am
 sure

sure ever will be within Doors, a due Consideration had of Mens Properties, either to protect the Owners in their Possessions; or to give them Value for them, when absolutely wanted for the Benefit of the Public.

Beside the great Value which the Superiors and those possess'd of Heretable Jurisdictions, put upon these Things which the Law terms *Pretium Affectionis*, well known in the Law of Scotland, and almost at all times allow'd of, when a Man's Property is taken from him (legally or illegally) against his Will; that is as much as the Proprietor himself values it at.

The real and true Value of many of the Casualties is very considerable: I have been credibly informed, that in the Year 1716, or 1717, a Superior of Lands in the North of Scotland sold his Superiorities to his own Vassals, and some other Gentlemen his Neighbours, for 13000 *l.* Ster. by which he disincumbered his other Estates, and purchased more; so that he now holds a free Estate, greater than has been in the Family for some Centuries past.

These, by the 20th Article of the Union, are declared to be Matters of Property: And, by the 18th Article, private Rights are declared and

and agreed to stand unalterable; except for the evident Utility of the Subjects of *Scotland*.

That some Ease to the Vassals, in the present State of the Holdings, since the Change of the Grants from free Gifts to hard Purchases (on which Point I think all the present Grievance turns), would be for the evident Utility of them, must be plain to every body: And so, with respect to them, some Alterations would be precisely in the Terms of the 18th Article.

But how to do Justice to the Superiors of Lands, and Holders of Heretable Jurisdictions, according to the Rights reserved to them, by virtue of the 20th Article, may be a Matter of some Difficulty to Men of more Foresight than the Author I have mentioned seems to have been Master of.

For myself, I can see no just Way for it but one: And that is, to let the Proprietors over-value them; and to let them have a moderate *Pretium Affectionis* for them. This, it seems, was the Thought of those who proposed the Scheme for Reduction of the Tenures in *England* in *James I's* Time; which I mentioned; viz. that a Commission should be appointed to inquire into the Values of the Benefits coming to the King, and the Lords of the Fee;
and

and to allow more for them than all their former Produce amounted to.

On these Terms, it's likely, the Proprietors of the Superiorities would be willing to renounce: And, as *Volenti non fit Injuria*; by such an Accommodation, we should keep within the Terms and true Construction of the sacred Articles of Union: The Articles I have mention'd; which the *Scotch* depended on as Fundamentals; and on Condition, and in Consideration of which, merged their Sovereignty and Independency into a new State.

So that, if ever there were such Things as Fundamentals in any State in the World, these of our Union must be held for such, and treated as Fundamentals use to be: For, if the Foundations are destroy'd, no House can stand long.

I know there are, who hold that there are no such things here as Fundamentals, or any thing not alterable by Parliament: But I think I may assert it for a known Truth, that in every State, where Liberty has any Place, Fundamentals are acknowledged, and held for sacred; without which the Fabric of the State would soon tumble.

If

If the Leagues of the *Swiss* Cantons; the *Pacta Conventa* of the *Seven Provinces*; the Articles of the *Aurea Bulla*, on which the *German* Empire stands, &c. without the Consent of all concerned, were, in any substantial Point, broken, by any of the Members thereof; the rest would hold the grand Contract to be dissolved.

But some may tell me of the Difference that is between these *Federal Unions* and ours; which is, Incorporating; and where no Parties can be assigned, legally to claim against another: But I am sure no candid Person will reckon this Objection otherwise than too metaphysical and unnatural to give Satisfaction to the injured Members; and sufficient to stifle their Complaints: For, in all human Societies, and Bodies Politic, even the most incorporate, there are *virtually*, and by Implication, Parties: To whom as much, or more, is due, than to the Members of a *Federal State*: Witness our *Magna Charta*, &c. And should Two of our Estates in Parliament oppress, or annihilate, the Third, as was done when the House of Lords were voted useless and dangerous; I am sure the Wrong'd would say, and justly,—*The Foundations are destroyed*: And it would more resemble the *Societas Leonina* in the Fable, than any thing human. — The Lion entered into

G

Partnership

Partnership with the Pointer, Greyhound, Fox, and the rest of the Beasts, to go a hunting: When the Prey was caught, the Lion claimed the first Part, because he was their King; the next, because he was the strongest; and for one Reason, or other, all the rest; because he found it was in his Power to have it so.

• When the *Scots* entered into that Contract, they, no doubt, perfectly well knew, that, even in a Legal Parliament, their 16 Peers, and 48 Commoners, could never make a Majority, either for protecting them in what they had, or for getting any thing new for their Advantage: So *Res ipsa loquitur*, that their whole Dependence must have been on the Immutability of the Things they had stipulated for, at that Time; as being the very Conditions of the Contract, on which they were to part with all their separate Power of protecting themselves, at any time to come: And as the Articles, then agreed on, made the sole Consideration of their parting with the Power of themselves, and becoming Members of a new State; these being the Pillars on which the new Fabrick was raised; they are *Fundamentals*, in the most natural and fullest Meaning of the Word; and therefore not to be altered (as I observed before), but where the express Words of the Treaty give such a Power, or where the Parties concerned are consenting.

In

In the Year 1713, the *Scots* Members of both Houses having seen and considered some Infringements that they conceived to have been made on these Articles, to the Prejudice of *Scotland*; as particularly by the Statute extending the Laws concerning Treason in *England*, to have Place in *Scotland*; Secondly, by the Construction of the Articles, to be a Bar against any of the Peers of *Scotland* being made Peers of *Great-Britain*; and Thirdly, for the Weight and Inequality of the *Malt-Tax*, as being laid on that of *Scotland* (which in many Places is not worth a Shilling a Bushel) the same as on that of *England*, worth 3 or 4 Shillings a Bushel, &c. they attended the then Queen, for Leave to bring in a Bill for an Act to dissolve the Union: As not having had the good Effects that had been expected. And a Motion was made by the late Earl of *Finlater*, in Name of Himself and all the Peers of *Scotland*, for Leave to bring in the Bill: Which was seconded; and, on a Division, was rejected, and, I think, only by a Majority of One.

In the Debate, as I well remember, the late Earl of *Peterborow* compared the Union to *Marriage*: And, taking *England* for the Husband, and *Scotland* for the Wife, he said merrily—"That if the Husband did prove
 " unkind now-and-then, the Lady must not
 G 2 " think,

“ think, for that, to get free, and be her own
 “ Mistress again.” And (to carry the Allegory a
 little further) I cannot help observing, that She
 had no Trustees in her Settlement; so that if
 She should be heartily drubbed, I know not to
 whom She can make her Complaint: Or, as
Job said in his Distress—Where to find a *Dayf-*
man, to lay his Hand upon both; but the
 great and just God, and our most gracious
 Sovereign,

The excellent *Silius* said (And I wish the
 Poet may not be a Prophet)

Qui frangere rerum
Gaudebit pacta; ac tenues spes linquit amici;
Non illi domus, aut conjunx, aut vita manebit
Unquam expers luctus lacrymaeque.——

Whether the Grievances which I have men-
 tioned; and others, that some may think to be
 so; had any Influence in raising such a Spirit
 of Rebellion in the Year 1715, or another of
 of a later Date; I leave to Others to ruminate
 upon: But I confess, that, with respect to both,
 it was Matter of Wonder to me, even to Asto-
 nishment; that so many Protestants, even some
 of them zealous *Revolutioners*, could take Part
 in Measures so destructive; if it was not to
 glut themselves with Revenge for Wrongs con-
 ceived to have been done; and, *Samson-like*, help
 to

to pull down the House, and pride themselves in perishing with their Enemies; and lying buried with them in the Ruins.

Whether any further Alterations are to be made in the Articles of the Union, particularly in the 18th and 20th Articles, by taking from the Superiors, and those having Heretable Jurisdictions, their Properties without their Consent, must be left and submitted to the Wisdom of the Legislature; which, I dare say, will never take Mens Properties from them without a due Consideration, as was said before, notwithstanding of what our Author has said, or others of his way of thinking, who would take Mens Estates and Properties from them, and treat them as we do Lunatics:—Take their Estates; and tell them we do it for their Good.

What I have written in these few Sheets, I intended principally with respect to the Superiorities, and the Vassalages: And, I flatter myself, I have put that whole Matter on a fair and just Footing.

The Rights of Superiority are marketable Things; they have been, and still may be bought and sold; so that, if the Price can be agreed on to have them taken away, Law and Justice will allow of the Alteration: And, if the Thing is of such Consequence to the Peace
and

and Safety of the State, the Allowance for them ought to be the larger. And I am sure a very few 100000 Pounds will satisfy all the Superiors in *Scotland*. Such a Sum would be nothing for our Parliament to raise; whose Credit is such, that they need but hold up their Hands for Money, and more is always laid to their Hands than they want.

So much with respect to the Superiorities and Vassalages.

But, with respect to the taking away the Heretable Jurisdictions; I confess I am so unfortunate, as not to be able to perceive, that such a Change would be for the *evident Utility* of the Subjects of *Scotland*; either to those that hold them, or those who live in them: And if that is so; such a Change, against the Consent of those concerned in them, must be in direct Contradiction to the Words of *Treaty*, and the Terms and Conditions thereby stipulated.

Whether such a Change would be for the evident Utility of the Possessors of such Jurisdictions, must be best known to themselves: And they are, it seems, of another Opinion: They reckon very highly upon them; partly for the Profits of them; but more a great deal for the Honour and Lustre they give them, and their Families.

If

If they were Matters of Profit only, some reasonable Satisfaction might be thought enough for them ; but how we can force them to part with a Grant of Honour, is no-ways clear to me : I believe it would sound strangely in the Ears of the Counts Palatine, the Earl Marshal, the Lord Great Chamberlain, the Lords of the Demefne-Lands, the Lords of Manors, and even of others of lower Degree in *England*, to hear of having these Honours forced from them against their Will : And I cannot see, but in consequence of, and pursuant to, a Measure of that Nature, Titles of Honour in Peerage might be resumed and revested in the Crown, without their being guilty of any of the Crimes as yet specified in the Law ; but only on Account of some Surmises, that such might by their Powers, some time or other, disturb the Peace of the Government.

These Things, I should think, were not marketable; and therefore of such a Nature, that no Price, nor Value, could be put upon them.

This, it seems, was the Sense and Construction the Nobility and Gentry put upon them, when they so strenuously insisted on them in their Treaty with the *English*; and which they thought they had for ever secured for themselves, and their Posterities : And on the
Faith

Faith of that, and the other things stipulated and agreed to by the Articles, they waved the Sovereignty of their independent State: And both by the Common Law, and the Law of Nations, if the Condition is broken, and the Consideration not satisfied, the Contract is gone.

It does not then very plainly appear, that the annihilating the Jurisdictions is for the Utility of those who have them; or that the taking them from them without their Consent, is consistent with the Agreement.

Now, as to the Suiters, and those who are subject to such Jurisdictions; it does not appear to me to be in any ways for their Utility neither: They who live in the Palatinates, in the Lordships of Demefne-Lands, Manors, &c. are so far from thinking they are in worse Case than others, that they hug themselves in their Privileges; in not being subject to be brought before strange Judges, and higher Courts, at the common great Expence, that attends such Suits, &c.

I will not trouble my Reader, in this cursory View, to enumerate all the Privileges of those living in Palatinates, Manors, and other privileged Jurisdictions; but will beg Leave, only to mention a few of those that they enjoy, who

are

are within the ancient Demefne-Lordships :
Which may give Light to all the reft.

The Demefne-Lands are fuch as were not at firft granted by the Sovereign in Feodal Tenure; but referved for the Sufenance of the Royal Family : But were afterwards granted to Subjects, with all the Privileges the Tenants enjoyed before. Some of their Privileges are :

The Tenants in fuch Lordships are exempted from Taxes by Parliament ; unlefs fpecially named : From Tolls, and Paflages for Goods bought and fold in Fairs and Markets; for things concerning Husbandry and Sufenance : They are exempted from all Expences for Knights of the Shire : They cannot be fued for Lands out of the Demefne : Nor can they be put on Juries any-where elfe : In many of which Privileges they agree with thofe in the Regalities in *Scotland* : In all which the Privileges of the Palatinates far exceed them : And the Lords of Manors have fome, that the inferior Heretable Jurifdictions in *Scotland* have not.

So that, comparing Things with Things ; here appears a very extraordinary Scheme : The Proprietors of Eftates and Honours are to part with them againft their Wills, againft their Articles, and againft the Law that confirmed

firmed these Articles, for Reasons no-ways satisfactory to the Persons concerned: They who have them are against parting with them: And those who are pretended to be favoured by the Change, not only do not desire it; but tremble at the Bruit of the proposed Change: And all the Alterations in the Law, which the Treaty allows of (with respect to private Rights), are only such as are for the *Evident Utility* of those concerned: Which in this Case they disclaim.

Where then shall we find this extraordinary Utility; or where shall we seek for it? It does not seem to be in favour of the private Rights of the Subjects of *Scotland*, but to destroy them.

I have lately seen another Pamphlet, intitled, *An ample Disquisition*, &c. much of the same Strain with the Letter I mentioned before: Only the last is for allowing the Superiors, and these having Heretable Jurisdictions, &c. some Consideration in lieu of them; which the other would not.

The First made free with the Articles of Union, because they were made in Haste, and calculated to answer secret and unrevealed Views.

This

This last tells us, ---- These Rights should be annihilated, because they endanger the publick Peace, and raise Rebellions: And therefore, he says, they ought to be taken away from those that hold them: And that doing so is no Breach of the Articles at all; because private Property must yield to public Convenience; as when Houses are pulled down to make a Passage more convenient, &c. And though the Articles before-mentioned provided expressly, that these Things shall not be alteral, yet that Power that made them may void them: I presume he means the Parliament.

With respect to his First Rule, or Argument, it's certainly true in many Cases: But it is very well known, that such Cases happen but seldom, and only in some particular Parts; and these of no great Consequence, or Value: Whereas here the Rights and Properties of a whole Nation are struck at, at once; which varies the Case exceedingly. -- There is a Maxim in Law, ---- *De minimis non curat Prætor*: ---- But, if it extended to a greater Concern, it ought to meet with another Construction.

With respect to the Power of Parliaments, of making and repealing Acts, nobody can doubt of that; but that seems not to be the Case here: The Articles of the Union were

made and entered into by two Sovereign and Independent States, and only confirmed by Parliament, just as many other Articles are; which a Parliament never alters, without Consent of Parties,

To illustrate this Matter more fully, I cannot use a more pertinent Simile, than that of the Earl of *Peterborow*, which occurred before: ----- If a Man and a Woman agree to marry together; and, by an ante-nuptial Contract, agree upon Articles, that's no Marriage till the Person makes it so, on their Consent *de præsenti*. Can any Man say, that the Power that made them Man and Wife, had any Power to unmake them, or make void their Articles, in Whole, or in Part? Or could it be imagined, that a Parliament, or any Judicatory, in a judiciary Way, would meddle further, than to compel the specific Performance of the Articles; but not to void them?

I might here again repeat what I said before, of these Articles standing in the place of Fundamentals.

And (to my thinking) the Arguments used by our Author in these Points, are very loose and ill-grounded, even in Matters of Fact, especially with respect to the Jurisdictions; which, he says, was one of the Causes of
 carrying

carrying on the Rebellion; whereas others, that know better, tell us quite the contrary, and that they had not the least Connexion with it; or Influence upon it, more than they had in assisting the *French* in the taking *Fort St. George*, as has been set in a full Light in other late Pamphlets, by Authors closely attached to the Government, both by Principle and Interest.

The last-mentioned Author has started one Objection to the Bill; *viz.* That some of the Lords will think it hard for them to be levelled with the Rebels: And indeed, so I believe will Every-body.

The Answer this Author makes to it is so full and explicit, that I cannot help inserting it here in his own Words; that the Reader may see the Complexion of those of his way of Thinking.

In Page 20. he says: " It is in vain for this
 " or that Heretable Lord to pretend to be
 " injured, because he is levelled with Rebels.
 " ---- It is the Power that made the Rebel:
 " And the same Power that made the one so
 " To-day, may make another so To-mor-
 " row." And, in Page 24. he has it in these
 " Words: " A Power which no Subject
 " ought

" ought to be Master of: And therefore, tho'
 " divers Lords, in the same Situation, may
 " not have rebelled, it matters not. ---- They
 " have the Seeds of Rebellion hid in their
 " Power: And as they may spring up on
 " some Occasion hereafter, Experience has
 " taught us to know the Necessity of annihil-
 " ating them, without Exception.

I might here, in Consequence of this Tenet,
 ask the Author what he would have done
 with a Man, who, living in a Neighbourhood
 where a Horse was stole, help'd the Owner
 to recover his Horse from the Thief; and
 whether he did not deserve to be hang'd as
 well as the Thief: For, tho' he did not steal
 that Horse, but help'd to recover him, yet he
 had it in his Power to steal another Horse; for,
 as the Power made the Rebel, the Power of
 Thieving may make the Thief.

As the Rebels had the bad Seed in them;
 the loyal Lords who ventured their Lives for
 the Service of the King and Government,
 ought to be thought to have that good Seed in
 them, that might spring up, and do the like good
 Service some time hereafter, if it should be
 wanted.



Upon

Upon the Whole; if the Bill passes, I humbly conceive it must be for more weighty Reasons than are, as yet, revealed: Which I shall not pretend to inquire into, or say any thing of, but —

Je pense plus.

F I N I S.

E R R A T A.

P. 23. l. 16. after *Life*, add *as I observed before*; *ibid.* l. 17. dele *As I observed before*. P. 37. l. 3. dele *To help him*. P. 38. l. 8. after *Things*, add a Comma.

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